



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOHN L. HILL  
ATTORNEY GENERAL**

**July 18, 1977**

Hon. Raymond Vowell, Commissioner  
State Department of Public  
Welfare  
John H. Reagan Building  
Austin, Texas 78701

Open Records Decision No. 166

Re: Whether records of the  
Department of Public Welfare  
relating to mistreatment of  
a nursing home resident are  
public under the Open Records  
Act.

Dear Mr. Vowell:

You have requested our decision regarding whether records of the Department of Public Welfare relating to mistreatment of a nursing home resident are public under the Open Records Act, article 6252-17a, V.T.C.S. You state that the Department has initiated an investigation into allegations of mistreatment of residents of a certain nursing home. You have received a request for "all records of the beating incidents" concerning a particular resident who is a recipient of medical assistance.

Section 3(a)(1) of the Open Records Act excepts from disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision. . . ." Section 10 of article 695j-1, V.T.C.S., provides, in pertinent part:

It shall be unlawful, except for purposes directly connected with the administration of general assistance, old age assistance, aid to the blind, aid to families with dependent children, aid to the permanently and totally disabled, or Medical Assistance, and in accordance with the rules and regulations of the State Department, for any person or persons to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of, or names of, or any infor-

-mation concerning, persons applying for or receiving such public assistance or Medical Assistance, directly or indirectly derived from the records, papers, files, or communications of the State Department or subdivisions or agencies thereof, or acquired in the course of the performance of official duties.

(Emphasis added). In our opinion, this provision is clear. It prohibits, with the exceptions noted in the statute, the release of "any information concerning persons . . . receiving . . . public assistance or Medical Assistance." Since the individual who is the subject of the request is a recipient of medical assistance, since the information relates to her receipt of services funded by a medical assistance program, and since the release of the information pursuant to this request is not for "purposes directly connected with the administration" of the program, we believe that the Department of Public Welfare is statutorily prohibited from releasing any information about her. See Open Records Decision No. 9 (1973). We do not consider any right the recipient might have to the information or any right she might have to authorize its release. See Hutchins v. Texas Rehabilitation Comm'n, 544 S.W.2d 802 (Tex. Civ. App. -- Austin 1976, no writ).

You also state that some of the information may have already come into the possession of the requestor, but that the Department "has not voluntarily or officially released any information concerning this recipient." Section 14(a) of the Open Records Act provides:

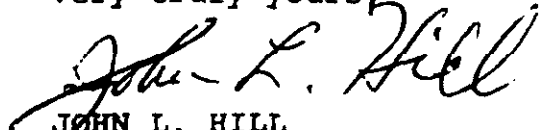
This Act does not prohibit any governmental body from voluntarily making part or all of its records available to the public, unless expressly prohibited by law; provided that such records shall then be available to any person.

Disclosure of the records in question is, however, expressly prohibited by law. See Open Records Decision No. 162 (1977), which involved, inter alia, a statute that, instead of expressly prohibiting release of the relevant records, permitted discretionary release of information. It is our decision, therefore, that records of the Department of Public Welfare

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relating to mistreatment of a nursing home resident who is a recipient of medical assistance are excepted from public disclosure under section 3(a)(1) of the Open Records Act and section 10 of article 695j-1.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
DAVID M. KENDALL, First Assistant

  
C. ROBERT HEATH, Chairman  
Opinion Committee

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